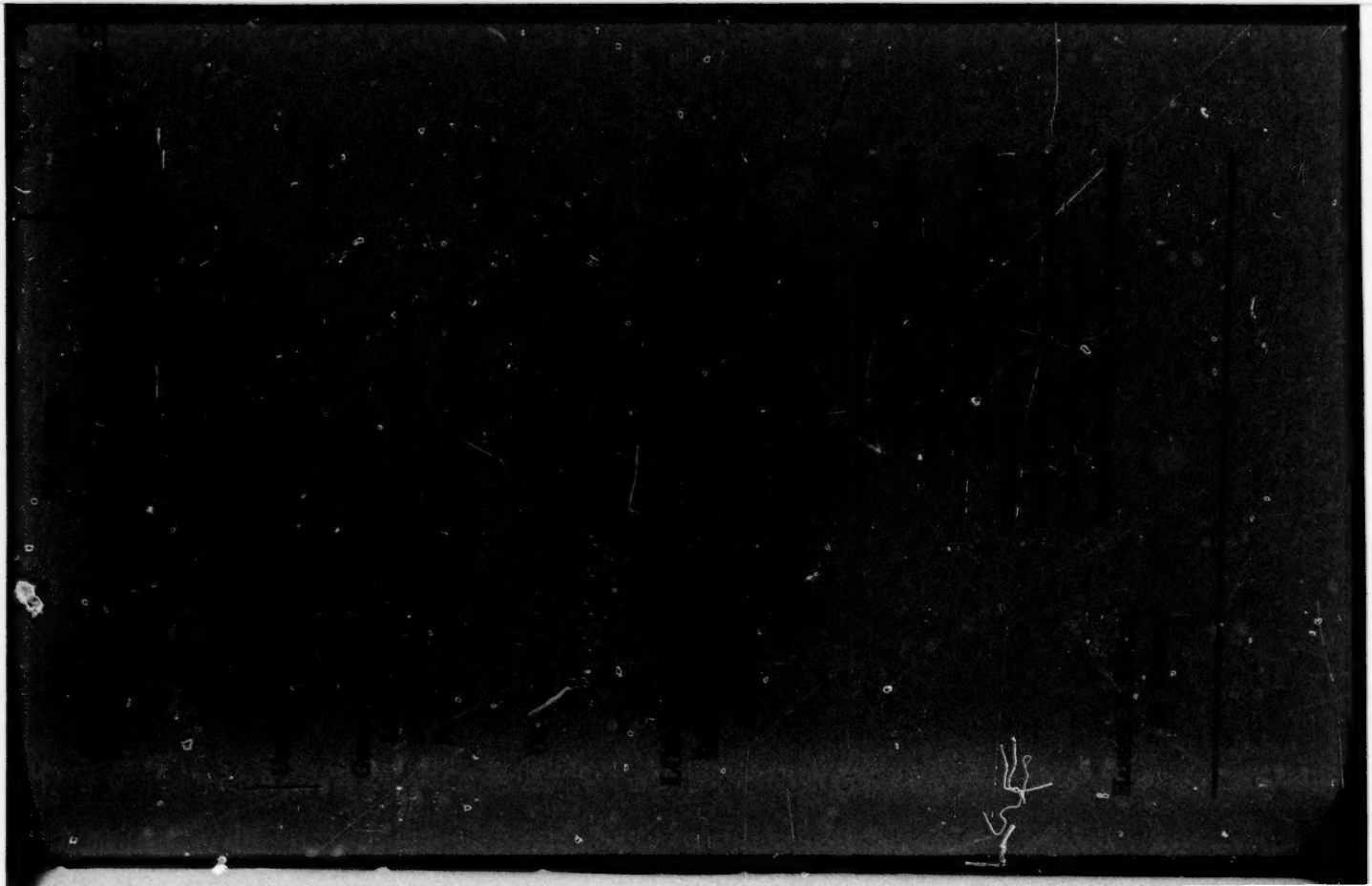

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 820

UNITED STATES OF AMERICA,

Appellant,

v.

GENERAL MOTORS CORPORATION;
LOSOR CHEVROLET DEALERS ASSOCIATION;
DEALERS' SERVICE, INC.; AND
FOOTHILL CHEVROLET DEALERS ASSOCIATION,

Appellees.

On Appeal from the United States District Court for the Southern District of California, Central Division.

MOTION OF APPELLEES LOSOR CHEVROLET DEALERS ASSOCIATION, DEALERS' SERVICE, INC., AND FOOTHILL CHEVROLET DEALERS ASSOCIATION TO AFFIRM OR DISMISS

Appellees Losor Chevrolet Dealers Association, Dealers' Service, Inc., and Foothill Chevrolet Dealers Association (hereinafter appellee Dealer Associations) move (a) pursuant to Rule 16 (1)(c) that the judgment of the District Court be affirmed on the ground that there are no questions at all presented as to said appellees, or, (b) in the alternative, pursuant to Rule 16 (1)(a) that the appeal be dismissed on the ground

that it is not, as to said appellees, in conformity to the Revised Rules of this Court.

STATEMENT

Appellee Dealer Associations adopt the statement of the case contained in the Motion to Affirm of appellee General Motors Corporation, supplemented, however, by the following:

Each of the appellee Dealer Associations is a California non-profit corporation formed many years ago by franchised Chevrolet dealers without any solicitation or encouragement by General Motors, and the Dealer Associations are not operated, directed, controlled or guided by General Motors. Each appellee Association provides services for its dealer-members, including an information bureau to assist dealer members in trading cars, provides advertising and sales promotion activities, and engages in advocating the passage of legislation pertaining to motor vehicles. None of these Associations engages in the sale of automobiles. (Fdgs. 4, 5, 6 and 7)

ARGUMENT

I. The judgment of the District Court should be affirmed because no question at all is presented as to appellee Dealer Associations.

Neither the notice of appeal nor the statement of jurisdiction presents any question *as to the appellee Dealer Associations*. The question presented in both documents fails to mention the appellee Dealer Associations. In

both documents the only question presented reads as follows:

> "Whether an arrangement between the General Motors Corporation and all its franchised Chevrolet dealers in the Southern California area whereby the latter undertook not to sell new automobiles through discount houses or referral services violated Section 1 of the Sherman Act."

The argument set forth in appellant's jurisdictional statement shows that the failure to mention appellee Dealer Associations in the question presented was not inadvertent. In the 11-page argument attempting to establish that the question presented is substantial (J. S. 10-21), there is not a single reference to appellee Dealer Associations.

The District Court found as follows with respect to appellee Dealer Associations:

> "43. . . . They [appellee Dealer Associations] did not act in combination, conspiracy, or concert with General Motors. There was no agreement between the defendant dealer associations, or any of them, and General Motors as to what action General Motors would take or whether General Motors would take any action at all with respect to the practice by some Chevrolet dealers of selling through discount houses or referral services.
>
> "44. There was no express or implied agreement between defendant associations or between any of them and any of their dealer members that any of said

dealer-members should refrain from selling through discount houses or referral services. . . ." (J. S. at 38a)

The Government has not questioned these findings in the notice of appeal or in the jurisdictional statement. Moreover, it has precluded review of these findings and further argument *as to appellee Dealer Associations* by failing to present any question as to these appellees in the notice of appeal or statement of jurisdiction (Rule 15(1) (c) (1)). There is, therefore, no possible basis on which the District Court's judgment as to the appellee Dealer Associations can be challenged.

Accordingly, the judgment of the District Court should be affirmed because the questions presented on which the decision of this cause depend are so unsubstantial *as to these appellees* as not to further argument (Rule 16 (1) (c)).

II. The Notice of Appeal and Jurisdictional Statement fail to comply with Revised Rules 10(2)(c) and 15(1)(c)(1) as to appellee dealer associations.

Rule 10(2)(c) of the Revised Rules of this Court provides:

> "2. The notice of appeal shall be in three parts; . . . (c) It shall set forth the questions presented by the appeal, expressed in the terms and circumstances of the case but without unnecessary detail. . . . Only the questions set forth in the notice of appeal or fairly comprised therein will be considered by the court . . . ."

Rule 15(1)(c)(1) of the Revised Rules provides:

"1. The jurisdictional statement required by paragraph 2 of Rule 13 shall contain in the order here indicated —

"(c)(1) The questions presented by the appeal, expressed in the terms and circumstances of the case but without unnecessary detail . . . . Only the questions set forth in the jurisdictional statement or fairly comprised therein will be considered by the court."

Neither the notice of appeal nor the statement as to jurisdiction complies with the foregoing Rules *as to the appellee Dealer Associations*. As indicated above, the question presented in both documents fails to mention the appellee Dealer Associations.

An appeal is in conformity with the Rules as to a given party only if the questions set forth (or those fairly comprised therein) pertain to said party. Since the question presented does not pertain or relate to any of the appellee Dealer Associations, questions with respect to said appellees cannot properly be considered by the Court. (See Rules 10(2)(c) and 15(1)(c)(1)). The appeal must therefore be dismissed as to these appellees.

CONCLUSION

The motion to affirm or dismiss should be granted.

Respectfully submitted,

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February 10, 1965.